

EXHIBIT 3

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:
WINSTAR,

Debtor.

) Chapter 11
)
)
)
) Case No. 01-1430

COPY

Tuesday, December 18, 2001
4:00 p.m.
Courtroom 6A

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.
United States District Court Judge

APPEARANCES:

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
BY: PAULINE K. MORGAN, ESQ.
BY: M. BLAKE CLEARY, ESQ.

and

SHERMAN & STERLY
BY: MARK SHAPIRO, ESQ.

Counsel for the Debtors

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and

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8 BY: SHIRLEY S. FUJIMOTO, ESQ.

9 BY: CHARLES H.F. GARNER, ESQ.

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11 Acquisition, Inc.

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21 Telecommunications

22 MORRIS, JAMES, HITCHENS & WILLIAMS

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14 Counsel for velocita

15 LOWENSTEIN SANDLER
16 BY: PAUL KIZEL, ESQ.

17 Counsel for AT&T Corp.

18 Also Present:

19 Mr. Howard Jonas
20 Mr. Gary Morgan
21 Ms. Carolyn Hunter
22
23
24

1 THE CLERK: All rise.

2 THE COURT: Good afternoon.

3 Mr. Shapiro.

4 MR. SHAPIRO: Good afternoon, Your
5 Honor. Mark Shapiro from Sherman & Sterling for
6 Winstar Communications, Inc.

7 Your Honor, we're here for the
8 continuation from the hearing yesterday scheduled
9 to approve an asset sale agreement. As Your Honor
10 knows, when we appeared yesterday, we did not have
11 a signed asset sale agreement with any bidder.

12 Just to recount history for one
13 moment. Debtors held an auction at the office of
14 Sherman & Sterling. The Debtors chose Wintel led
15 by Mr. Lawrence Zimmerman as the highest and best
16 offer.

17 With the purchase price proposed of
18 \$85 million in cash and various assumption of
19 certain liabilities.

20 Mr. Zimmerman, as part of that
21 offer, agreed that he would deposit \$15 million in
22 an escrow account with Sherman & Sterling.
23 Unfortunately, that did not come to pass. And as
24 of yesterday morning, Wintel -- Zimmerman had

1 never deposited any of the funds that were
2 promised nor had the Debtor ever reached
3 agreement, even in principal, with Mr. Zimmerman.

4 We adjourned the hearing and had a
5 chambers conference with Your Honor to discuss the
6 possibility to converting this case to Chapter 7
7 and I guess fortuitously, when we were out in
8 chambers, IDT Corporation met with Arthur Newman
9 and the president from the Blackstone Group to
10 make an offer for purchase of substantially all of
11 the assets of Winstar Communications. That offer
12 was communicated on the record yesterday before
13 Your Honor, which contained salient points, but
14 remain subject to a definitive agreement to be
15 negotiated and signed by the Debtor and by
16 purchaser IDT Corporation or special purpose
17 vehicle to be established by IDT.

18 At this point, I believe we just
19 finished initialing all the changes and the only
20 thing that remains to be done is to have IDT's
21 representative sign the agreement, which I'm being
22 told is going to happen at this very moment. And
23 since we only have one copy that's actually marked
24 up, I would ask Your Honor if we could sign the

1 agreement right now so we know we have a signed
2 agreement.

3 THE COURT: All right.

4 MR. GLASSMAN: I don't know who
5 this is.

6 MR. SHAPIRO: This is Mr. Charles
7 Garner, executive of IDT.

8 MR. GARNER: Am I president of
9 the --

10 MR. SHAPIRO: Yes.

11 In addition, I believe we have
12 complete agreement of the management agreement,
13 which is proposed to be signed not today, but at
14 the closing which is proposed for tomorrow, but we
15 have an agreement of a form of management. I
16 don't know if Mr. Selinger could hand that up.

17 We also have agreement of a form of
18 order although I do know that the FCC, I believe
19 and the Justice Department were negotiating a few
20 modifications to the order. I don't know if those
21 were completed, but I suspect if they're not, we
22 could complete them in very short order.

23 What I'd like to do now, Your
24 Honor, is as Your Honor knows, under the asset

1 purchase agreement, the purchaser has requested
2 that the Debtors provide a topping fee, in the
3 event that the higher and better offer was
4 accepted and approved by this court.

5 The topping fee, which is contained
6 in Section 6.10D of the asset purchase agreement
7 provides that as a condition to buyers obligations
8 here under -- sellers agreed to pay to buyer
9 amount equal to two and a half percent of the cash
10 payment. Cash payment for the record is \$30
11 million.

12 If this agreement is terminated
13 other than as a result of default by the buyer and
14 the performance of the obligations hereunder,
15 sellers shall enter into one or more sales
16 transactions and such transaction or transactions
17 should be consummated.

18 Being that, the placing of a fund
19 into an escrow fund would not constitute receipt
20 by the sellers until the founder actually released
21 to the sellers.

22 To summarize, two and a half percent
23 of \$30 million would be paid to them if a higher
24 and better offer is received. Obviously, the

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1 buyer should be saddled with any obligation that
2 existed before we entered the scene is just
3 foreign as a matter of concept, and it's foreign
4 as a matter of the negotiated agreement.

5 THE COURT: Well, --

6 MS. SILVERSTEIN: I'm sorry. We
7 were not a part of the negotiations, and this is
8 very different than a melt down. In a melt down
9 where we are now, we have a purchaser. It's a
10 very different situation, and this purchaser is
11 trying to get the benefit of these contracts.

12 I doubt very seriously that they're
13 going to be assuming the carrier contracts, but
14 they are going to be getting the benefit, and then
15 we'll reject them.

16 MR. ALBALAH: We are going to go in
17 and say yes, yes, yes, no, no, no. When we say
18 yes, we'll cure it and we'll assume any
19 termination liability is going forward. It's
20 typical cure. I think everyone understands that
21 it's not controversial. We're going to groom, say
22 reject, reject, reject. From closing to
23 rejection, we'll pay nothing else.

24 THE COURT: Well, the question is

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1 from closing to rejection if there's a termination
2 cost, are you going to pay that?

3 MR. ALBALAH: No, because we are
4 stepping in here to carry it and to decide if
5 we're going to drop it or we're going to really
6 keep it forever. If we assume it, we'll keep it
7 forever.

8 THE COURT: What's your principal
9 of payment under the contract that it would be
10 operating on until you make that decision? That's
11 the point.

12 MR. ALBALAH: The principal of
13 payment?

14 THE COURT: Yeah. What they're
15 saying is you can't take -- and I'm just using
16 this as an example, you can't take a ten paragraph
17 contract and say, We only like Paragraph 3.

18 MR. ALBALAH: We are not assuming
19 the contract.

20 THE COURT: I understand that.
21 What are you --

22 MR. ALBALAH: How much are we
23 paying?

24 THE COURT: Right. Where are you

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1 getting the number from?

2 MR. ALBALAH: We said it in here
3 several times.

4 THE COURT: You're going to pay
5 under the agreement?

6 MR. ALBALAH: The rates charged,
7 exactly right. We will pay the rates charged, the
8 "rates charged by service providers for such
9 services shall not exceed the rates for those
10 services in effect as of the date of this sale
11 order".

12 We are taking the agreement.
13 They're going to continue providing, we will pay
14 that rate.

15 THE COURT: And if there's a
16 thousand customers and 500 terminate and there's a
17 termination fee, is that part of the rate?

18 MR. ALBALAH: No. We are not
19 paying the termination fee. We are not paying the
20 discontinuation fee. We're not paying the
21 disconnect fee.

22 Conceptually we are simply saying we
23 are going to solve the problem of an orderly
24 migration, and I think if I -- if I'm not being

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1 articulate, please understand me, the reason why
2 I'm saying please tell me is I want to make sure
3 everyone understands it. I say that in the spirit
4 that I don't understand the concept of anyone
5 looking to the buyer to pay a termination
6 discontinuation or disconnect fee.

7 If you understand what we're doing
8 it's just foreign.

9 MR. JONAS: The more likely
10 scenario is SBC does business in let's say 20
11 states, you know, with Ameritech. So we may
12 decide we're going to keep Chicago and Dallas, and
13 we may decide we're not going to keep San
14 Antonio.

15 So then we say, okay, we reject San
16 Antonio. We don't think that we should be charged
17 a disconnect charge on San Antonio because we have
18 the right to disconnect the contract. The fact
19 that they have a monopoly that goes over 20 states
20 isn't our fault. That they were just one company
21 and we rejected, now we understand if we accept
22 Dallas and there's a past due on Dallas, we have
23 to cure the past due in order to keep, you know,
24 the contract past 120 days or whatever.

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1 But it's -- you know, to say that
2 you've got to get penalized because you rejected
3 the contract and in any one city goes against the
4 whole spirit of the agreement.

5 MR. SHAPIRO: Your Honor, as you
6 may recall, we actually had a briefing on this
7 similar issue of this case, which hasn't been
8 ruled on yet, which is whether or not corn chronic
9 for circuits that we had previously terminated
10 during the case would constitute either unsecured
11 claims, which is the Debtors' position or whether
12 they would constitute administrative claims, which
13 was the position of the argyles.

14 I think at best they have an admin
15 claim against the estate if we do this, which is
16 their position in their papers that they filed
17 with the Court. They do not have a claim against
18 the buyer.

19 MR. SHERMAN: Andrew Sherman for
20 Qwest Corporation, Qwest Communications. I think
21 that issue, Mr. Shapiro, was an issue relating to
22 Qwest. But I reiterate the position of
23 Ms. Silverstein. If this is and if they're going
24 to get the benefit of the contract, they're going

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1 to -- I mean, what Your Honor did in this order is
2 direct the service providers to comply under the
3 terms of the agreement.

4 So we're complying under the terms
5 of the agreement. We're directed to do that, but
6 we don't get the benefit of it. It just doesn't
7 make sense.

8 MR. ALBALAH: I neglected to point
9 out another fundamental thing, and please tell me
10 if I'm missing something. If we don't do this
11 deal and we walk out of the courtroom right now,
12 there will be no money to keep this company
13 alive. It will convert, whatever, but the FCC
14 very well may, as Your Honor I know has been
15 alluding to, compel the carriers from providing
16 service, whether it's 31 days, or 35 days, or
17 whatever it is.

18 MR. SHERMAN: Your Honor, what is
19 the relevance of that to whether the termination
20 charges are valid? I mean, they're going to --

21 MR. JONAS: The question that Qwest
22 is bringing up, and I'm sure that Verizon is going
23 to bring up is the same thing that SBC is bring
24 up, that there's a variety of DS-3, OC-3's, OC-3,

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1 every kind of line all over the place.

2 Some of those lines are going to be
3 valid, and some, you know, are not going to be
4 valid. Now, it could have been that we would have
5 bought them from 30 different companies, but in
6 this case, the way Winstar worked, they sort of
7 concentrated and they bought it from a couple of
8 companies.

9 If we decide that we want to keep
10 the lines from New York to Boston or we want to
11 keep the lines from Boston to Dallas, okay, after
12 a certain period of time, we have to cure what we
13 owe on that line. But if we decide we don't want
14 to keep the line going from Cleveland to, you
15 know, Iowa, we shouldn't be charged a termination
16 charge.

17 It's just a contract that we are
18 rejecting. It's just a contract that we're
19 deciding not to keep, and that's the spirit of the
20 agreement.

21 MR. SHERMAN: As Mr. Jonas knows,
22 there are hard costs absorbed when you terminate a
23 circuit. There's either manual labor that has to
24 go out and actually absorb the cost of

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1 termination. I don't think it's just switching a
2 switch.

3 The cost that the carrier has to
4 incur, some of it, from what I understand from
5 what my client, you know, better than I, is
6 sometimes you have to go out to a circuit. If
7 it's in collace (phonetic) space, you have to turn
8 it off.

9 MR. JONAS: It's your collace
10 space, which costs money to send personnel to do
11 that.

12 MR. ALBALAH: If the carriers would
13 prefer us not do the deal.

14 MR. JONAS: I'm not playing Russian
15 Roulette here. I don't want to play that game.

16 The spirit of the contract is the
17 contract that we keep, we pay for, and we cure.
18 The ones that we reject, we just reject. You know
19 what, what may be if they want to play it like the
20 other way, I'll play it the other way.

21 We'll pay all the termination
22 charges, but anything that we decide to accept,
23 let's forget the cure amount and then, you know,
24 that's okay with me, too, if they would rather

1 have it that way.

2 MS. SILVERSTEIN: Your Honor, this
3 purchaser is getting the benefit of these
4 contracts. This court is ordering us to perform
5 under them for the benefit of this.

6 THE COURT: No. I'm not going to
7 do that. What I'm going to do is I'm going to
8 call the providers bluff. I've worked pretty
9 diligently with everyone to try to get value out
10 of this. I'm willing to let the providers take
11 their positions.

12 And Mr. Jonas is a business man.
13 He's the only one in the courtroom making sense,
14 not the lawyers.

15 I'm not going to put him in a
16 situation where you all have sold your legal
17 arguments without the benefit of the business
18 advice of your clients.

19 I think if Mr. Jonas sat down with
20 your clients, you would find that your clients
21 would be amazed at the arguments that you're
22 making, and they'd rather talk to Mr. Jonas and do
23 a deal.

24 But what I'm going to do is I'm

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1 going to reject the order as it's framed, and
2 because I see all the folks lined up, I'll just
3 agree with all your positions, and somebody will
4 be happy because you're competitors of Mr. Jonas,
5 so you'll go out in the marketplace, and you'll
6 knock heads. And the rest of you will suck wind.
7 It's too easy and Mr. Jonas will
8 save himself a lot of aggravation trying to save a
9 business. So I'm going to reject the order as
10 framed.

11 If you get something different, get
12 back to me.

13 All right. We'll be in recess.

14 (Court was adjourned at 8:46 p.m.)
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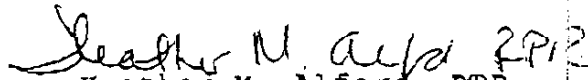
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1 State of Delaware)
2 New Castle County)

6 CERTIFICATE OF REPORTER

8 I, Heather M. Alford, Registered
9 Professional Reporter and Notary Public, do hereby
10 certify that the foregoing record, Pages 1 to 256
11 inclusive, is a true and accurate transcript of my
12 stenographic notes taken on December 18, 2001, in
13 the above-captioned matter.

14
15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal this 27th day of December, 2001, at
17 Wilmington.

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